## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO. 5:09-CV-346-FL

MILDRED C. CHRISTMAS,	)	
	)	
Plaintiff,	)	
	)	
V.	)	ORDER
	)	
NORTH CAROLINA DEPARTMENT	)	
OF ADMINISTRATION, STATE OF	)	
NORTH CAROLINA,	)	
	)	
Defendant.	)	

This matter comes before the court on defendant's motion to substitute a witness (DE # 78), filed March 15, 2012. Defendant seeks to call Gerry Fisher as a witness in lieu of Valerie Ford Robinson, where Ms. Robinson informs she is unavailable for trial. Ms. Robinson is the former Human Resources Director for defendant, and Mr. Fisher is the Division Director of Employee Relations and Workforce Performance for the North Carolina Office of State Personnel.

Defendant has not filed a supporting memorandum and does not indicate in its motion plaintiff's position regarding the requested substitution. However, the parties inform as follows in their joint proposed pretrial order, submitted March 13, 2012:

Counsel for Defendant informed Counsel for Plaintiff on March 13, 2012 that Defendant intends to submit a Motion to substitute the testimony of Valerie Ford Robinson for the testimony of Gerry Fisher. Counsel for Defendant informed Counsel for Plaintiff that Mr. Fisher will be available for deposition any date prior to trial. Plaintiff will object to Defendant's Motion to Substitute on the basis that Mr. Fisher was not identified in Defendant's initial disclosures, pretrial disclosures, or during the course of discovery. If Valerie Ford Robinson will be unavailable to testify, Plaintiff will not object to Defendant reading her deposition testimony into the record.

Am. Joint Proposed Pretrial Order 13.

The parties inform that defendant did not disclose Mr. Fisher in its Federal Rule of Civil

Procedure 26(a)(1)(A)(i) disclosures. Nor apparently did defendant ever identify Mr. Fisher by Rule

26(e) supplemental disclosure. Further, Mr. Fisher was not identified in defendant's pretrial

disclosures, filed February 10, 2012.

Where it appears from the parties' submission that defendant did not disclose Mr. Fisher as

a potential witness until March 13, 2012, less than two weeks before trial, the court agrees that

addition of Mr. Fisher as a witness would unfairly prejudice plaintiff. Accordingly, defendant's

motion to substitute a witness (DE # 78) is DENIED.

Upon consent of plaintiff, and pursuant to Rule 32(a)(4), defendant may read into the record

the deposition testimony of Ms. Robinson, subject of course to the Federal Rules of Civil Procedure

and Federal Rules of Evidence.

SO ORDERED, this the 16th day of March, 2012.

LOUISE W. FLANAGAN

Howir W. Dloragan

United States District Judge